HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 614 of 2007

Between:

Mohd. Shoukath

… Appellant

And

Industrial Tribunal-cum-Labour Court,
Warangal rep. by its Judge & others

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri M. Pandu Ranga Rao

August 09, 2007

Per G.S. Singhvi, CJ

The appellant, who is one among many thousand beneficiaries of the fraudulent employment market, which has grown in this country in last three decades, succeeded in persuading the Presiding Officer, Industrial Tribunal-cum-Labour Court, Warangal to accept his plea for invalidation of the action taken by the employer to terminate his service, but did not feel satisfied with the award of reinstatement with continuity of service and other benefits except back wages, invoked jurisdiction of this Court under Article 226 of the Constitution of India for mandating the respondents to pay him full back wages by claiming that the termination of his service without complying with the provisions of Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947 (for short, 'the Act') has the effect of rendering the action of the employer as nullity and the learned Presiding Officer committed a jurisdictional error by refusing the relief of reinstatement with back wages. The learned Single Judge took cognizance of the

background facts, the development of law on the subject in the last half decade and ruled that the wrongful termination of service by way of retrenchment or otherwise does not necessarily warrant an order of reinstatement and that too with full back wages. This is the reason why the appellant has appealed against order dated 28.2.2007 passed by the learned Single Judge in Writ Petition No.7194 of 1997.

The appellant was engaged as daily wage Typist by Divisional Forest Officer, Warangal South Division on 2.4.1991 and continued in that capacity till 6.11.1992 with intermittent breaks. He raised an industrial dispute under Section 2-A(2) of the Act by alleging that even though he had worked for 266 days, the employer terminated his services without complying with the mandate of Section 25-F of the Act. The learned Presiding Officer of the Tribunal referred to the pleadings of the parties and held that the termination of the workman's service is vitiated due to violation of Section 25-F read with Section 25-B of the Act and that he is entitled to reinstatement with continuity of service. The learned Presiding Officer then noted the argument of the Government Pleader that neither the post was sanctioned nor any work was available for the workman and held that the latter will not be entitled to back wages and other monetary benefits.

The learned Single Judge observed that the petitioner's employment for about 260 days in the twelve months preceding the oral termination of his service did not create any legal right in his favour and the learned Presiding Officer did not commit any illegality by declining the relief of back wages.

Shri M. Pandu Ranga Rao, learned counsel for the appellant employed his usually persuasive methodology to convince us that the view taken by the learned Single Judge on the appellant's entitlement to back wages suffers from an error of law. He relied on the judgment of the House of Lords in **Ridge v. Baldwin**[1] and of the Division Bench in **Divisional Engineer Telecom v. Mamidi Venkata**

Ramana[2] and argued that the learned Presiding Officer of the Tribunal and the learned Single Judge have not assigned reasons for making departure from the normal rule of reinstatement with back wages and, therefore, the order under challenge is liable to be set aside with a direction for payment of full back wages to his client, but we have not felt convinced. In recent years, the Courts have taken cognizance of the fact that thousands, if not lakhs of persons, are employed in public services in total disregard of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. In **Delhi Development Horticulture Employees Union v. Delhi Administration, Delhi**[3], the Supreme Court, after taking note of the widespread corruption, favoritism and nepotism in public employment and unreserved violation of the doctrine of equality, observed as under:

> "The object of the scheme was not to provide the right to work as such even to the rural poor — much less to the unemployed in general. No fault can be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc."

The unchecked growth of the menace of illegal employment in

public services is one of the reasons why the Courts have been extremely reluctant to apply what was at one time treated as golden rule i.e. reinstatement with full back wages as a necessary concomitant of the finding recorded by the Labour Court or Industrial Tribunal that the termination of the services of the employee, who falls within the definition of "workman" under Section 2(s) of the Act is illegal, void ab initio or nullity. The Courts have also taken cognizance of the fact that the employment or engagement of employees on daily wages or for fixed period without the availability of vacant post, without work and without finances puts unbearable burden on the public exchequer and held that the rule of reinstatement with back wages cannot be employed as a matter of course. This position is clearly discernible from the judgments of the Supreme Court in **Allahabad Jal Sansthan v. Daya Shankar Rai**[4], **GM, Haryana Roadways v. Rudhan Singh**[5], **M.L. Binjolkar v. State of M.P.**[6], **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[7], **U.P.SRTC Ltd. v. Sarada Prasad Misra**[8], **Municipal Council, Sujanpur v. Surinder Kumar**[9] and **J.K. Synthetics Ltd. v. K.P.Agrawal**[10].

In **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey** (supra), the Supreme Court referred to large number of judicial precedents on the subject and held:

> "Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now, with the passage of time, a pragmatic view of the matter is being taken by the court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched. The changes brought about by the subsequent decisions of this Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing, is evident.

> No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act. While granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence."

In **J.K. Synthetics Ltd. v. K.P.Agrawal** (supra), the Supreme Court held:

> "The manner in which "back wages" is viewed, has undergone a significant change in the last two decades. They are no longer considered to be an automatic or natural consequence of reinstatement. There has also been a noticeable shift in placing the burden of proof in regard to back wages. There is also a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow, as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualised while granting consequential benefits automatically. Whenever courts or tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether "continuity of service" and/or "consequential benefits" should also be directed."

The negative view expressed by the learned Single Judge on the entitlement of the appellant to get back wages is in tune with the trend of the recent judgments of the Supreme Court. Therefore, we do not see any reason to upset the impugned order and entertain the appellant's claim for back wages.

In the result, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.1240 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

August 09, 2007

C.V. NAGARJUNA REDDY, J

Note: LR copy be marked.
(BO)

ksld

---

[1] 1964 Appeal Cases 40
[2] (2003) 3 ALD 290 (DB)
[3] (1992) 4 SCC 99
[4] AIR 2005 SC 2371
[5] (2005) 5 SCC 591
[6] (2005) 6 SCC 224
[7] (2006) 1 SCC 479
[8] (2006) 4 SCC 733
[9] (2006) 5 SCC 172
[10] (2007) 2 SCC 433